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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CALISTA ENTERPRISES LTD, a
Republic of Seychelles Company,

Plaintiff,

vs.

TENZA TRADING LTD., a Cyprus
Company,

Defendant.

No. 3:13-cv-01045-SI

DEFENDANT TENZA TRADING LTD.'S
MOTION FOR LEAVE TO FILE REPLY IN
SUPPORT OF TENZA'S MOTION TO
COMPEL

Pursuant to Local Rule 26-3(c), Defendant and Counterclaimant Tenza Trading Ltd. (“Tenza”) brings the following motion:

LR 7-1 CERTIFICATION

The undersigned counsel for Tenza certifies that counsel for Tenza conferred in good faith with counsel for Plaintiff Calista Enterprises Ltd. (“Calista”) by telephone on March 19, 2014, prior to filing this motion. The parties were unable to resolve the issue raised in this motion, and the Court’s assistance is respectfully requested.

MOTION

Tenza moves the Court for an order permitting Tenza to respond to Calista’s Opposition to Tenza’s Motion to Compel Discovery (Dkt. No. 61). Tenza recognizes that replies are not ordinarily permitted pursuant to LR 26-3(c), but requests this unusual relief because Tenza wishes to correct misstatements regarding the facts made by Calista in its Response. In the alternative, Tenza requests that the Court consider Tenza’s Motion for Leave to Amend Counterclaim and for Terminating Sanctions (“Tenza Mtn to Amend/Sanctions”) (Dkt. No. 58) as a constructive reply in Support of Tenza’s Motion to Compel Discovery, and consider the pleading when evaluating Tenza’s Motion to Compel, as most of the points Tenza would make in a reply are already of record in that pleading.

MEMORANDUM OF POINTS AND AUTHORITIES

Tenza filed its Motion to Compel (Dkt. No. 48) on February 27, 2014. In response to Tenza’s Motion, Calista filed its Opposition on March 17, 2014. Issues raised in Calista’s Opposition require response from Tenza to correct misstatements regarding the facts and fully inform the Court, and Tenza respectfully requests the opportunity to do so. For example, Calista argues that Tenza, “has not made an argument of alter-ego” (Calista Opposition to Tenza’s Motion to Compel Discovery (“Calista Opp.”), p. 4), yet that is the exact subject of Tenza’s pending Motion for Leave to Amend and for Terminating Sanctions. Tenza Mtn to

Amend/Sanctions, pp. 10-14. Moreover, Calista continues to cite the testimony of Alexander

Zhukov (Calista Opp., p. 3, fn 2). However, in Tenza's pending motion, Tenza demonstrates that Mr. Zhukov committed substantive and material perjury. Tenza Mtn to Amend/Sanctions, pp. 5-6.

Tenza notes that most of the materials that would be covered in the Reply brief were fully briefed in Tenza's Motion to Amend. Therefore, in order to save time and resources of the Court and the parties, Tenza respectfully suggests it would preserve costs and time for the Court to consider Tenza's Motion to Amend (and materials submitted therewith) as a constructive Reply in Support of Tenza's Motion to Compel, when reviewing the merits of Tenza's Motion to Compel.

CONCLUSION

Although replies are not ordinarily permitted pursuant to LR 26-3(c), Tenza requests this unusual relief because Tenza wishes to correct misstatements regarding the facts made by Calista in its Response. In the alternative, and expressly for the sake of efficiency, Tenza requests that the Court consider Tenza's Motion to Amend and for Terminating Sanctions as a constructive reply in Support of Tenza's Motion to Compel Discovery, and consider the pleading when evaluating Tenza's Motion to Compel, as most of the points Tenza would make in a reply are already of record in that pleading.

Dated: March 19, 2014

Respectfully submitted,

s/ Devon Zastrow Newman

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